ASSISTED LIVING CERTIFICATION STANDARDS

FREQUENTLY ASKED QUESTIONS

Effective September 8, 2006, the Assisted Living Regulations (651 CMR 12.00 *et seq.*) (the "Regulations") have been amended. Since that effective date, Elder Affairs has received the frequently asked questions (FAQs) listed below on certain of the Regulations' provisions that we have separately identified by heading. To the extent possible, Elder Affairs will update this list as additional FAQs are received. These FAQs should be used as a supplement to, not as a substitute for, the Regulations. Any comments or suggestions may be made to the Assisted Living Certification Program at 617-727-7750.

Definitions:

Capitalized terms used but not defined in the FAQs have the meanings set forth in the Regulations.

The following Policy Statements are rescinded and have been replaced by the Regulations as supplemented by these FAQs:

Dietary Requirements
Disclosure of Rights and Services
Food Service Personnel
Introductory Visit
Limited Medication Management
Residency Agreement
Restraints in Assisted Living
Self-Administered Medication Management

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1. What type of records will Elder Affairs need to look at during a compliance review?

In order to facilitate the efficient review of the necessary records, each Residence must be prepared *immediately* to provide:

- A list of all Residents that includes the following:
  - Which Residents receive assistance with medication and the type(s) of assistance received;
  - Which Residents participate in Group Adult Foster Care (GAFC);
  - Which Residents live in the Special Care Residence, if applicable;
  - Unit numbers;
  - Move-in dates (not the date the Residency Agreement was entered into); and,
  - Move-in dates, if applicable, for each Resident who moved into the Special Care Residence from another Unit of the Residence.

- A list of all employees that includes the following information for each employee:
  - Employee name;
  - Date of hire;
  - Date of active employment, if different from date of hire;
  - Date of employment in Special Care Residence, if different from date of hire;
  - Employee's title/position; and,
  - Confirmation of CORI prior to hire.

- Personal Care Worker assignment and task sheets (i.e., a detailed description of Personal Care Workers' assigned Residents and the tasks that will be performed for those Residents and for that assignment).

2. After Elder Affairs has chosen a number of individual Resident and employee records from the above lists, what other documentation will Elder Affairs need to review?

At a minimum, a compliance review will include all of the information set forth in 651 CMR 12.09(1). This means that any and all of the required items that constitute the Resident Record, as set forth in 651 CMR 12.05(1) may be reviewed, as well as any other related documents pertaining to the Resident or a Residence staff member that are created and/or maintained by the Residence, regardless of how those documents are captioned or titled, or their form (e.g., communication logs, shift notes, or post-it notes).

3. How long must we maintain Resident Records?

As set forth in 651 CMR 12.05(1), Resident Records are considered permanent and must be maintained by the Residence for the duration of the Resident's stay and for at least six years after

the termination of the Residency Agreement, which requirement does not replace any other applicable record retention laws.

4. For how long must we maintain all records on site at the Residence?

It is critical that all records (including Resident Records, and employment records of contracted employees, whether employed individually, or as part of an agency) going back two years or since the last Elder Affairs compliance review, whichever is longer, be easily accessible at all times. Accordingly, this documentation must be kept at the Residence or in a building which is located on the same campus as the Residence, and more than one staff person must have access to the documentation to ensure that all such records are accessible to Elder Affairs at any time. Further, records older than two years must be made available to Elder Affairs within a reasonable time. (Also, see the response to FAQ 3 of this section above concerning Resident Records.) And, note that this requirement does not replace any applicable requirements under record retention laws. A Residence must not remove or destroy any records without ensuring compliance with the Regulations and these laws.

5. What if my supervisor tells me not to allow Elder Affairs to review incident reports?

Refusal to grant Elder Affairs timely access to Residents, staff, all books, records, and other documents maintained by the Residence relating to its operations constitutes a valid basis for Elder Affairs to suspend, revoke, or deny a Residence's application for an initial or renewal certification.

6. What documentation from a Resident should the Residence provide in order for Elder Affairs to review the Resident's record?

A Resident's consent must be requested in accordance with CMR 12.09(1)(c), prior to the re-certification visit. Note that once obtained, the same consent may be used for subsequent re-certification visits, provided that such consent is not revoked (i.e., it is not necessary to get a new consent from the Resident after two years, if the original consent is still in place).

1. What would be an acceptable way to meet the regulatory requirement to "provide Residents with sufficient information to allow them to follow sodium restricted, low fat, and sugar restricted diets?"

Residences could put notations on a table top menu to indicate which foods are low in fat, salt, or concentrated sweets. This method is acceptable because it is consistent with the primary purpose of the Regulations, which is to promote the dignity, individuality, privacy, and decision-making ability of Residents.

Other methods, such as putting cards on the table to indicate that Residents must ask their servers for the information, or putting the information on a menu board outside of the dining room are not acceptable because these methods are inconsistent with this purpose. In the former case, the Resident's rights of privacy and independence would be violated because the Resident would have to reveal publicly that he or she is on a restricted diet. The latter method would disadvantage Residents with visual and memory impairments.

2. At lunch, we have two low fat food items: garden salad and mixed vegetables. Is this sufficient to meet the dietary requirements?

Not necessarily. A Residence must provide meals that:

- Meet the current Dietary Reference Intake (DRI) established by the Food and Nutrition Board of the Institute of Medicine and the Dietary Guidelines for Americans (DG), published by the Secretaries of Health and Human Services and Agriculture; and
- Provide sufficient food choices to allow a Resident to follow a diet that is low in fat, salt, or concentrated sweets, *and* provides adequate nutrients for Residents.

This means that the inclusion of one or two low fat items on the lunch menu does not necessarily provide sufficient nutrition (e.g., calories, protein, vitamins, and minerals) to meet the dietary guidelines. A piece of chicken with pita bread, mixed vegetables, and a salad may be sufficient, whereas a garden salad and mixed vegetables alone would not be acceptable.

3. What type of documentation must our Dietician provide to demonstrate our compliance with these Regulations?

Every six months the Dietician must review the meal plans and give the Residence a letter (or similar documentation) which states that he or she has reviewed the meal plans and that the following criteria have been met:

- The meal plans meet the current DRI and the DG; *and,*
- The meal plans allow a Resident to adhere to sodium restricted, sugar restricted, and low-fat diets.

4. Our Dietician reviewed our meal plans and sent us a letter saying that the menus are generally satisfactory, but suggested some improvements. Would this letter, with no further action on our part, meet the requirements of 651 CMR 12.04(3)(b)(4)?

It depends. If the Dietician determined that the meal plans meet dietary guidelines and allow adherence to certain diets, but suggested changes only to enhance the variety of foods provided or to appeal to an older population, then you would not be required to make the changes in order to be in compliance. On the other hand, if the Dietician suggested changes necessary for each meal to provide sufficient vitamins or calories, then you would have to have made such changes to be in compliance. Otherwise, the food would not meet the requirements of the DRI and the DG.

5. A Resident gave us a copy of a physician's order for a soft diet (i.e., a specific Therapeutic Diet). What must we do with this order?

First, you must determine whether your Residence provides a soft diet. Your Disclosure of Rights and Services and/or Residency Agreement should already outline services you do not or cannot provide, including this one, if applicable. Second, if your Residence does not accommodate soft diets, you must notify the Resident. Third, you must document the Resident's dietary need on the assessment and service plan and, if the Residence cannot meet this need, indicate this on the assessment. (See 651 CMR 12.04(7) and 12.04(8) regarding assessment and service plan requirements, respectively.)

Finally, the Residence must have a Dietician review all Residents' Therapeutic Diets and be available to speak to these Residents about how to make food choices that would allow them to adhere to their Therapeutic Diets. This review must be completed at the Dietician's next scheduled visit to the Residence and must be documented in each applicable Resident's record.

1. 651 CMR 12.08 provides a lot of detail about steps in the disclosure process, including requirements about Resident Rights, a Consumer Guide, and the Residency Agreement. What is the overall purpose of this process?

The Regulations are intended to ensure that the prospective Resident is fully informed prior to making his or her commitment to the Residence through the execution of the Residency Agreement or the transfer of money to the Residence, and to clarify the documentation needed to demonstrate compliance.

2. Our Residence frequently provides impromptu tours for interested elders and their family members. Sometimes they request a copy of the Elder Affairs Consumer Guide or other information. Does this interaction constitute a "formal meeting"?

The goal of this requirement is to be sure that at the point that a prospective Resident begins to seriously consider moving into the Residence, that he or she will have available all of the important information that the Resident needs to determine whether the Residence will meet his or her needs, and will be within his or her budget. Therefore, the Regulations do not require the Residence to provide this information at any and all meetings with prospective Residents, but only at the first formal meeting.

The interaction you described does not constitute a formal meeting, although it may be a prelude to further interaction (including a formal meeting). A Residence is free to provide a full set of disclosure materials to prospective Residents in advance of a formal meeting, and giving that material to a prospective Resident does not turn an impromptu tour into a formal meeting. If, however, at the end of a tour, whether scheduled or unscheduled, a prospective Resident expresses a real interest in moving into the Residence, the Residence would need to schedule a formal meeting with the Resident and any identified Representative.

3. What is meant by the term "formal meeting"? Can its requirements be fulfilled without person-to-person meetings?

The formal meeting generally is the person-to-person forum through which the Residence completes the disclosure process for the Resident and his or her family and/or representative. Although we do not specifically prescribe what constitutes a formal meeting, in-person meetings are preferred so that the Residence's representatives can provide face-to-face disclosures and review of the required documents. If the circumstances of a particular Resident's situation are such that there is not a good opportunity for an in-person meeting (e.g., to accommodate a family member that is out of state), a telephone conference would be permissible. However, the Residence should adequately document why an in-person meeting is not possible, and how the full disclosure requirements were met.

4. How do I know that I am taking all of the right steps in the right order to be in compliance with the Regulations regarding the disclosure process?

To comply with the intent of the Regulations regarding the disclosure process, a Residence should follow this four-step process:

1. Prior to scheduling a formal meeting with the prospective Resident, the Residence must notify the prospective Resident of his or her right to be accompanied by a Legal Representative, Resident Representative, or other advisor.
2. At the first formal meeting, the Residence must *deliver and verbally review* with the prospective Resident, the Elder Affairs Consumer Guide and the Residence's Disclosure Statement.
3. At or prior to the earlier of the Resident's execution of the Residency Agreement or the transfer of money to the Residence, the Residence must provide a copy of the Residency Agreement to the prospective Resident, the contracting party (if different from the Resident), and, if applicable, the prospective Resident's Legal Representative, and must verbally review it with them.
4. Upon execution of the Residency Agreement, the Residence will deliver a signed and dated copy of the Residency Agreement to each of the applicable signatories.

5. How can I document that a Resident received the proper notice before (s)he paid for and moved into the Residence?

The Resident Record documentation must include a statement signed and dated by the Resident affirming (a) his or her timely receipt of notice concerning his or her right to representation, and (b) documentation of the Residence's timely delivery and review of the Elder Affairs Consumer Guide, the Residence's Disclosure Statement and the applicable executed Residency Agreement.

The Residence satisfies the disclosure requirements by giving required notice, making delivery, and reviewing the required documents with the Resident's advisor and his or her representative (e.g., financial advisor or spouse), unless circumstances warrant disclosure to a Legal Representative as defined in 651 CMR 12.02.

6. Is there a requirement regarding minimum print size for the Disclosure Statement?

The Disclosure Statement must be published in font no smaller than 14-point type face. Furthermore, statement forms should be available in larger print for interested parties who request it.

7. Does the Disclosure Statement have to be issued as a separate or independent document?

Yes. Initially the Disclosure Statement must be delivered as a separate and independent document (e.g., the Disclosure Statement may not be issued as a component of the Resident handbook, or the Residency Agreement).

8. Must we inform Elder Affairs if we alter our Disclosure Statement?

Yes. Changes to a Disclosure Statement must be reported to Elder Affairs at least thirty (30) days prior to implementation.

1. Does the requirement in 651 CMR 12.07(8) mean that each Food Service Manager must have completed a ServSafe® course?

No. The completion of a food service sanitation course sponsored by any of the following organizations meets these requirements:

- Certifying Board for Dietary Managers (phone: 1-800-323-1908);
- Experior Assessments (phone: 1- 800-624-2736);
- National Restaurant Association Professionals (phone: 1-800-446-0257); and
- National Restaurant Association Educational Foundation (ServSafe®) (phone: 1-800-765-2122).

2. What other requirements regarding food service personnel must be met?

The job description for the person or persons responsible for supervising the dietary department must indicate that completion of an acceptable food sanitation course is required prior to employment.

Introductory Visit (651 CMR 12.07(5)) **June 4, 2007**

1. Does an Introductory Visit need to be done every time a service plan is reviewed and/or updated?

An Introductory Visit must be conducted prior to or within 48 hours after a personal care worker is to provide Personal Care Services to a Resident; and whenever the Resident's personal care needs change *significantly*, as determined by the nurse. A change in the service plan does not necessarily mean that the Resident's personal care needs have changed significantly.

2. If a personal care worker (PCW) does not work a shift prior to or within 48 hours of a Resident moving in (e.g., the Resident moved in on a Monday, but the PCW only works weekends), how can the nurse conduct the Introductory Visit with that PCW within the required timeframe?

An Introductory Visit must be done prior to or within 48 hours after a personal care worker *is to provide Personal Care Services to a Resident,* not within 48 hours of when the Resident moved into the Residence. Therefore a PCW who, for example, only works on the weekends must receive an Introductory Visit to the care needs of a new Resident within 48 hours of the start of his or her weekend shift.

3. Must the nurse conduct an Introductory Visit for personal care workers from the overnight shift?

That depends upon the service needs of your Residents during those hours. A nurse must review the Resident's service plan with *those personal care workers (at the same or separate times) who are regularly scheduled to provide personal care to the Resident.* If, for example, a personal care worker is scheduled to work during the hours of 11:00 p.m. to 7:00 a.m., but is not assigned to provide any personal care to the Resident, then an Introductory Visit would not be required. However, if the personal care worker will be assigned to provide personal care to the Resident during these hours, then an Introductory Visit must be conducted.

4. We only have a part time nurse. Can he or she go over the service plan with just the senior or lead PCWs, who can then review the service plan with the other PCWs?

No. The nurse must conduct the Introductory Visit in person with all applicable PCWs. Therefore, the nurse may not review the service plan with a "Lead Aide" with the intent of having that Aide then conduct an Introductory Visit with the other personal care workers. In addition, reading a service plan does not meet the requirements of an Introductory Visit.

5. We only employ Certified Nursing Assistants (CNAs) with several years of experience to function as our PCWs. What is the benefit of reviewing a service plan with a PCW with such experience?

An Introductory Visit should not be a review of basic or straightforward tasks such as how to assist a Resident with the shower or ambulate with a walker, but is meant to be an opportunity for the nurse to educate the personal care worker regarding the *individualized* service plan needs of a particular Resident *based upon the skill level of the individual personal care worker*.

Some examples of Introductory Visits are as follows:

- If a Resident is afraid of having water on his or her head due to a childhood trauma, the personal care workers should be told of special ways to assist this Resident with bathing.
- If a visually impaired Resident needs to use assistive devices in order to participate in SAMM, the personal care workers should be trained in the proper use of these devices.
- Explain a Resident's food allergy and other dietary needs.
- If a Resident has returned from a hospital or rehabilitation facility after recovering from a broken hip, the personal care workers should be instructed in the proper manner in which to assist the Resident with bathing.

6. How should we document the completion of an Introductory Visit?

Documentation must be kept in the Resident's record and must include the following information:

- The name of the Resident;
- The names and signatures of personal care workers, including the date(s) signed;
- The names and signatures of the nurses *each* time an Introductory Visit was conducted;
- The date(s) the Introductory Visit was completed (which may be different from the move-in date); and,
- A summary of topics covered.

Signatures of personal care workers and/or a nurse at the bottom of, or attached to a service plan is *not* sufficient documentation.

Limited Medication Administration 651 CMR 12.04(6)(d) June 4, 2007

1. Is Limited Medication Administration (LMA) a required service?

No. It is one of the services listed in 651 CMR 12.04(6) Optional Services.

2. If we decided at some later time to provide LMA, do we need to notify Elder Affairs?

Yes. LMA, if offered, must be included in the Residence's operating plan and, in accordance with 651 CMR 12.04(13)(b)(1), you must inform Elder Affairs in writing at least 30 days before you change any part of your operating plan. Therefore, if you decide to provide LMA, you must submit a detailed and timely policy statement to Elder Affairs prior to implementation of LMA. The policy statement must include the following information:

- The job title of the person(s) who will be responsible for providing LMA;
- Copies of job descriptions indicating that the licensed nurse will be responsible for performing Limited Medication Administration;
- A copy of the form that will be used to document LMA (e.g., MARS sheet);
- An explanation of the manner in which medication shall be secured; and,
- A description of the record-keeping system that will be used which will reliably and consistently document the information and authorizations that a licensed nurse must have to perform LMA.

3. What documentation must we keep relative to the performance of Limited Medication Administration (LMA)?

The Residence must have a record-keeping system which permits the licensed nurse reliably and consistently to document and verify the information and authorizations that a nurse must have to perform LMA. In accordance with 244 CMR 9.03(39), a licensed nurse providing Limited Medication Administration must document the handling, administration, and destruction of controlled substances in accordance with all applicable laws and regulations and in a manner consistent with accepted standards of nursing practice. All documentation must be complete, accurate, and legible. All documentation relative to Limited Medication Administration must be kept in the Resident Record as required by 651 CMR 12.05(1)(f).

In addition, nurses are required to obtain, create, and maintain the following documentation relative to the performance of LMA:

- An assessment of the need for LMA;
- A notation on the appropriate Resident's service plan of such need;
- A proper written medication order from an authorized prescriber*;
- The name, dose, route and time the medication was administered;
- The Resident's response to the medication(s) administered; and,

- The signature or initials of the nurse who administered the medication on the medication administration record.

* For more information about medication orders, please see The Board of Registration in Nursing's Advisory Ruling regarding *Verification of Medication Orders*.

4. Can a nurse crush a Resident's medication?

Yes, unless the Residence's policy prohibits it. The Regulations do not prohibit a licensed nurse from altering a medication's form (e.g., crushing or cutting pills) or from administering the medication in its altered form (e.g., crushing a medication, putting it into applesauce, and then feeding it to a Resident), provided that the Resident has an appropriate physician's order. A nurse's performance of all aspects of LMA must comply with the applicable laws, regulations, and standards governing nursing practice.

5. What does it mean to store medication for LMA in a way in which we can "adequately verify the integrity of the medication?"

Although you may not store medications outside of the Resident's room, additional safeguards are necessary to enable a nurse to be reasonably sure that he or she is administering medication as it was filled by the pharmacy. One way to do this is to lock up all medication which will be administered and to provide only the nurse who is responsible for performing LMA with the key(s) to the boxes. Residents, personal care workers, or family members should not be able to access any medication on LMA.

1. The Regulations state that the Resident service plan must describe whether "keys or access codes may be readily available to specified shift staff." How specific should the description be?

The description should be sufficiently detailed so as to inform the Resident and be consistent with the Resident's right to privacy. For example, a general statement that "keys and access codes may be readily available to specified shift staff" is too vague for Residents to be able to determine who may have access to keys to their Units. Rather, the description should specify which individuals, or at least which types of staff (e.g., by job title, shift, and wing of the Residence), have such access.

Service Planning

1. How many Resident Records should we review?

When conducting the review described in 651 CMR 12.04(10)(a), a minimum of 10% of the existing Resident files should be reviewed to ensure an adequate sample. If the Assisted Living Residence includes a Special Care Residence (SCR), it must review 10% of all files, and, within that set, 10% of SCR files.

2. Should we review the same Resident Records each year?

No. To ensure a breadth of review over time, at least a majority of the files chosen for the current quality audit should be unduplicated from previous recent audits.

3. How often does the Service Planning quality review need to be completed?

As set forth in 651 CMR 12.04(10), the Service Planning quality review must be completed at least once per year. To facilitate timely action, a report on the results of this audit should be completed within one month of completion of the review (e.g., by February 1, if the review is completed on January 1).

4. How do we need to document that the Service Planning quality review described in 651 CMR 12.04(10) has occurred?

The Service Planning quality review must include the following information:

- The date(s) the review was conducted;
- The name and title of the person(s) conducting the review;
- The name, move-in date, and Unit number of each Resident included in the review; (an alternative coding system can replace the Resident's name if desired by the Residence, but if so, the code must be made available to Elder Affairs);
- A summary of the findings; and,
- Applicable follow-up plans for improvement.

Residency Safety Assurance

5. We review Resident safety issues on an almost daily basis. How should we document that we reviewed "policies and procedures designed to ensure a safe environment for all Residents"?

To document this review, as required by 651 CMR 12.04(10), you should create a report at least once a year which includes the following information:

- A list of the policies and/or procedures which were reviewed;
- The date(s) these reviews were conducted;
- The name(s) and title of the person(s) conducting the review;
- Issues identified through the reviews;
- Actions taken to resolve the identified issues;
- The name and title of the person(s) responsible for taking each action;
- The timeframe within which the action was taken; and,
- Whether the action resolved the issue.

If the Residence has a Safety or Risk Management Committee, notes from each meeting will be accepted as a "report" as long as the notes include all of the required information listed above.

Medication Quality Plan

6. How many medication documentation sheets must we review?

The criteria for the selection of a "random sample" of Resident medication document sheets for the quarterly audit are the same as those required for the Service Planning portion of the QI / QA program (i.e., a minimum of 10%).

7. What documentation should we produce to demonstrate that we completed quarterly audits of medication sheets as required in 651 CMR 12.04(10)(c)(2)?

Each time the medication documentation is audited, or at least quarterly, the Residence should document the following information:

- The date(s) these reviews were conducted;
- The name(s) and title of the person(s) conducting the review;
- The names of the Residents whose medication sheets were audited;
- Issues identified through the reviews;
- Actions taken to resolve the identified issues;
- The name and title of the person(s) responsible for taking each action;
- The timeframe within which the action was taken; and,
- Whether the action resolved the issue.

Detection of Issues: Action to Resolve Problems

8. What documentation should we produce to demonstrate that we have a system in place that meets the standards set forth in 651 CMR 12.04(10)(d))?

The Regulations do not specifically prescribe how this system must be documented. However, as examples, the Residence could demonstrate (i) detection of issues and problems by documenting the appropriate use of a suggestion box, annual survey (in a summary report), and/or regular Resident meetings (in meeting notes), and (ii) the ability to resolve problems and

communicate outcomes by documenting any steps taken in response to the issues identified, including the name(s) and title of the person(s) responsible for resolving the issues, the timeframe within which the action was taken, whether the action resolved the issue, and how the response was communicated. The documentation should also indicate how the Residents are made aware of the availability of these systems, and if there were actions that were recommended by the representative body of the Residents but rejected by the Residence.

Reporting Resident-Specific Incidents or Residence-Wide Emergencies to Elder Affairs
651 CMR 12.04(11)(c) and (d) June 4, 2007

1. Does making a report to the Certification Unit at Elder Affairs replace any of our responsibilities to report to other agencies?

No. Reporting an incident to the Certification Unit at Elder Affairs does not replace any independent obligations to make other reports required under law.

2. What is the overall purpose of requiring Resident-specific incident reports? What types of Resident-specific incidents need to be reported to the Certification Unit at Elder Affairs?

The principal purpose of this requirement is to ensure that the Assisted Living Certification Unit is apprised of issues that, alone or in the aggregate, may be significant to its assessment of each Residence's provision for the health, safety, and welfare of its Residents. The requirement therefore enables the Assisted Living Certification Unit more effectively to assess the Residence's compliance with certification standards, and to be notified promptly about serious incidents that might require follow-up.

A Residence must report to the Certification Unit at Elder Affairs the occurrence of an incident or accident that has or may have a "Significant Negative Effect" on a Resident's health, safety or welfare. Note that there are *two* criteria which must be met in order for a situation to necessitate the filing of a Resident incident report:

(a) There was an incident* or accident; in other words, a distinct and unanticipated event; and,
(b) The result of the incident* or accident was a Significant Negative Effect for a Resident.

*For the purpose of determining reporting requirements, a situation that is solely the onset of a medical condition (e.g., a heart attack) is *not* an incident.

We encourage Residences to confirm that *both* of the above criteria are present before making a report. If an incident meets only (a) or (b), it does not need to be reported to Elder Affairs.

3. What is a "Significant Negative Effect"?

See the "definitions" section of the Regulations. It is a "situation in which a person is at significant risk of:

- Death,
- Immediate and serious physical harm, or
- Immediate and serious emotional harm."

The definition also lists events which represent or could lead to the above and which, if applicable, would need to be reported.

4. Please provide examples of situations that must be reported.

The following are examples of situations which must be reported:

- A Resident falls and, as a result, is provided with an unplanned or unscheduled visit to a hospital, clinic, or physician's office.
- A Resident falls and, as a result, experiences serious physical harm, serious emotional harm, or death.
- A Resident has an accidental injury and, as a result, is provided with an unplanned or unscheduled visit to a hospital, clinic, or physician's office.
- A Resident has an accidental injury and, as a result, experiences serious physical harm, serious emotional harm, or death.
- A Resident is assaulted and, as a result, requires police involvement or is provided with an unplanned or unscheduled visit to a hospital, clinic, or physician's office.
- A Resident's Unit is vandalized and (s)he exhibits signs of emotional trauma as a result.
- There is a medication management error (SAMM or LMA) and, as a result, the Resident is provided with an unplanned or unscheduled visit to a hospital, clinic, or physician's office.
- A Resident is missing and it is reasonable to believe that he or she may be in danger of physical or emotional harm.
- A Resident attempts to or does commit suicide.

The above list is not exhaustive. Consistent with the response to FAQ 2 in this section, the Residence should consider the principal purpose of the incident reporting requirement in determining whether or not a specific situation should be reported.

5. Do we need to report every fall or other incident or accident?

No, only those incidents or accidents that cause a Significant Negative Effect. For example, a fall that causes no injury and no serious emotional harm need not be reported. Although it could reasonably be classified as an incident, it did not cause a Significant Negative Effect.

6. Do we need to report every unplanned or unscheduled trip to a hospital, clinic, or physician's office?

No, only if the unplanned or unscheduled trip is the result of an incident. For example, a situation in which a Resident is sent to the hospital because (s)he experiences or exhibits shortness of breath, chest pain, nausea, weakness, fever, sudden confusion, or general decline in health status does not require a report, as long as it did not result from an incident.

7. Do we need to report every Significant Negative Effect, such as an unanticipated death?

No, only if it is the result of an incident. An example of a Significant Negative Effect that need not be reported is a Resident who, unrelated to an incident or accident, experiences a stroke or heart attack.

8. Do we need to report as an "elopement" all situations in which a Resident's location is unknown?

No, not all. First, many Residents may routinely and appropriately come and go from Residences, presumably without telling the Residence. Others may inform the Residence of an anticipated time of return, but choose to stay away longer or encounter delays in their activities. On the other hand, the Residence should be aware of which Residents have physical or cognitive issues that would warrant concern for those Residents' safety and well-being if their location is unknown and if they are not known to be with family or other supportive persons.

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9. Do we need to report incidents or accidents that do not occur on the property of the Residence?

Incidents or accidents which do not occur at the Residence and are not associated with the Residence's property need not be reported. For example, suppose that the Resident is on a shopping trip, falls getting out of the van, and needs medical treatment. If the Resident has fallen getting out of the Residence's van, it must be reported. On the other hand, if the Resident took the trip in a family member's van, it does not need to be reported.

10. How do we make a Resident-specific incident report to the Certification Unit at Elder Affairs?

The report must be made by telephone *and* in writing within 24 hours after the occurrence of the incident or accident. The telephone number to use to report Resident-specific incidents is: 617-222-7588. Follow the voice-mail prompt and leave a brief message. Written reports must be made by fax 617-727-9368 or e-mail (ALRincidentreport@state.ma.us).

11. What information needs to be included on the Resident-specific incident written report to the Certification Unit at Elder Affairs?

The report should not include the Resident's name, but must include all of the following information:

- The name and location of the Residence;
- The date and time of the incident or accident;
- A numeric identifier (or other unique identifier in place of the Resident's name) to identify the Resident(s) involved in the incident;
- The nature of the incident or accident;

- Any remedial action taken;
- The Resident's status (e.g., "admitted to the hospital," "remains at Residence," "appointment to see MD tomorrow," or "family notifying MD") at the time the report is made to Elder Affairs;
- List of other parties or agencies contacted; and,
- The name and phone number of the person at the Residence to contact if additional information is needed by Elder Affairs.

12. What Residence-wide emergency situations should be reported? How soon and in what manner?

Report any Residence-wide emergency situation that displaces one or more Residents from their Units for 24 hours or more.

Residence-wide emergency situations must be reported *immediately* to the Certification Unit at Elder Affairs by telephone and in writing by the method described in the response to FAQ 10 in this section.

Residence-wide emergency situations should also be reported *immediately* to the Assisted Living Ombudsman Program at Elder Affairs by calling the Elder Affairs main number at 617-727-7750.

13. What information must be included in a written report about a Residence-wide emergency situation?

To the extent known, provide the following:

- The name and location of the Residence;
- The date and time the emergency began or was identified;
- The nature of the problem;
- The number of Residents displaced;
- A numeric identifier (or other unique identifier in place of the Resident's name) to identify each of the displaced Residents so that Elder Affairs can track each such Resident;
- The number of GAFC Residents displaced;
- The number of Units rendered unusable due to the occurrence, and the anticipated length of time before the Residents may return to them;
- Remedial action taken by the Residence;
- Other State or local agencies notified about the problem; and
- The name and phone number of the person at the Residence to contact if additional information is needed by Elder Affairs; and,
- The current location(s) of all Residents displaced. (As noted above, each such Resident should be designated by numeric identifier (or other unique identifier), rather than by Resident name.)

14. How do we make an abuse or neglect report?

As always, reports of alleged or actual abuse or neglect must be reported directly to the appropriate Protective Services agency. The Elder Abuse Hotline is: 1-800-922-2275 (V/TDD).

You must also report abuse or alleged abuse to Elder Affairs pursuant to the Resident-specific incident reporting requirements outlined in the response to FAQ 10 of this section.

15. Do we have to make a separate report to the Group Adult Foster Care (GAFC) Program?

Yes. Although the MassHealth GAFC Program and Assisted Living Residence Certification are both overseen by staff of Elder Affairs, the programs are distinct, and the requirements are different. Assisted Living Residences that are MassHealth-approved GAFC Providers, therefore, must also adhere to reporting requirements set out in the GAFC guidelines, Bulletins, and other related MassHealth instructions. GAFC Providers must submit reports of emergency situations regarding Residents who receive GAFC services, and necessary follow-up documentation, according to those instructions, as well as according to the requirements for Assisted Living. GAFC Providers may contact the MassHealth Customer Service Team at 1-800-841-2900 with any questions about the GAFC program.

1. How must we document that a Residency Agreement was provided in the correct manner and at the right time?

The Residence must document and include in each Resident's file a confirmation that the Residence has timely delivered and reviewed the Residency Agreement with the prospective Resident in accordance with the standards set forth in 651 CMR 12.08.

2. All of the Units in the building are the same; does the Residency Agreement have to state the Unit number?

Yes. As the Residency Agreement must be for a particular Unit, the Residency Agreement should include the specific Unit number within which the Resident will reside. (See 651 CMR 12.08(2)(d).) If the Resident changes Units, an Addendum to the Residency Agreement must be signed.

3. If we routinely increase the monthly fee each year due to inflation, do we still need to have a signed written acknowledgment to reflect receipt of timely notice of the fee increase?

Yes. The policy is unchanged from under the previous Regulations. Unilateral prior notice of a fee increase is not sufficient. At a minimum, the Residence must make reasonable efforts to collect a signed acknowledgment (which could be just one page in length) from each Resident, or his or her Legal Representative, and Resident Representative, as applicable, to confirm the receipt of timely notice prior to the implementation of the fee increase. (Such acknowledgment should be maintained in the Resident Record.) However, to the extent that after the Residence makes reasonable efforts to obtain applicable signature(s), the Resident, Legal Resident, or Resident Representative refuses to provide a signed acknowledgment, the Residence may document these efforts in the Resident Record to satisfy this requirement.

4. Is the Residency Agreement a part of the Resident Record?

Yes. The Residency Agreement is part of the Resident Record. It is one of the documents that may be kept in a separate location onsite. (See section regarding Compliance Review Documentation Standards.) The Residence must maintain the original Residency Agreement and any documents which extend or amend the Residency Agreement.

5. Does Elder Affairs review and approve the Residency Agreement for compliance with applicable law?

No. Although Residences are required to submit the original Residency Agreement and any revisions to Elder Affairs, and Elder Affairs does review it to ensure its provisions comply with Elder Affairs' Regulations, this review should not be mistaken for a full review of the Residency Agreement for compliance with applicable law. Accordingly, each Residence must seek legal advice from its own counsel about compliance with applicable laws, and each prospective

Resident should consult with his or her own counsel before signing a Residency Agreement. (Note that if, through the course of ordinary certification review, Elder Affairs notices any inconsistency with legal requirements in the Residency Agreement, Elder Affairs will notify the Residence and require it to make necessary changes to comply with law.)

6. Before we revise the Residency Agreement, must we first submit it to Elder Affairs?

Yes. The Residency Agreement is considered part of the Residence's operating plan, and both the Residency Agreement and the operating plan must be kept current, and filed 30 days before the revised agreement would take effect. (See 651 CMR 12.04(13)(b)(1).) Please note that regular increases in fees do not constitute a change in the operating plan. (Also, as noted in the response to FAQ 5 in this section, Elder Affairs does not review Residency Agreements to confirm compliance with applicable law.)

7. What is the proper way to implement these Residency Agreement revisions with the Residents?

The Residence must implement the revised Residency Agreement with each new Resident moving in after the 30 day filing period has ended. Current Residents should sign the revised Residency Agreement upon the earliest of executing a renewal, the occasion of any "automatic" renewal, or when his or her Residency Agreement is amended.

8. Can we require a Resident to maintain insurance for motorized scooters or wheelchairs?

No. Absent the ruling of a court of competent jurisdiction, the Residency Agreement cannot require the Resident to obtain or maintain personal liability insurance related to a mechanized wheelchair or scooter. (See Sec. v. Country Manor, HUDALJ 05-98-1649-8 (9/20/01).)

9. Can we limit a Resident's rights regarding claims for loss or injury?

A Residence must not require a Resident to:

- Waive his or her right to assert *any or all* claims for loss or injury; or
- Indemnify, hold harmless or otherwise exonerate the Residence, or the Residence's employee(s) or other agent(s) from *any or all* liability to the Resident, his or her family, guest or invitee for *any* injury, loss, damage or liability arising from *any* omission, fault, negligence or other misconduct attributable to the Residence, or the Resident's employee(s) or other agent(s) (see M.G.L. c. 186, § 15).

10. If a Resident is scheduled to receive assistance with his or her medication at a specified time, can the PCA simply walk into the Resident's Unit at that time?

No. The employee or agent of the Residence must knock before entering and wait for permission from the Resident to enter the Resident's Unit. The Resident has the right to be

treated with consideration and respect and with due recognition of his or her personal dignity, individuality, and need for privacy. Accordingly, the Residency Agreement must state that the Residence will provide *reasonable* notice prior to an employee or agent of the Residence entering a Resident's Unit in every instance.

11. We know that in accordance with 651 CMR 12.08(1)(r), a Resident may not be evicted from the Assisted Living Residence except in accordance with certain provisions of Massachusetts landlord-tenant law. So what must we include in the Residency Agreement to comply with the Regulations?

Each Residence should consult its counsel about this to ensure compliance with all applicable law. However, at a minimum, the Residency Agreement must:

- Indicate that certain protections under the Commonwealth's landlord-tenant laws apply (e.g., in the absence of an eviction process, a Resident cannot be required to move, even when the Resident was not occupying his or her Unit because of a nursing home stay);
- Explain the conditions under which the Residency Agreement may be terminated by either party prior to the expiration of the term, *including criteria that the Residence may use to determine whether any of those conditions have been met, and the required notice period for termination of the Residency Agreement*; and,
- Include assurances that, consistent with applicable landlord-tenant law, the Residence and the Resident will each give prior written notice to the other in the event that either party asserts a right to terminate the Residency Agreement. (See 651 CMR 12.08(2)(a)(6); 12.08(2)(f) and 12.08(3)(j).)

12. We have given a Resident a notice of termination of the Residency Agreement in accordance with the eviction process required under applicable landlord-tenant law, which includes our requirement that the Resident vacate the Unit by the end of the month. Can we stop providing services at the end of the month?

No. The Residence's duties do not end when the Residency Agreement terminates. Until a Resident vacates his or her Unit, the Residence must continue to provide all of the services as agreed upon in the Residency Agreement, including but not limited to, meals, housekeeping services and Personal Care Services.

13. The Regulations state that the Residency Agreement must include a grievance procedure, information about service limitations, staffing, and other specific information. How should all of this information be addressed in the Residency Agreement?

The following standards apply in determining compliance whenever such provisions are included in a Residency Agreement or the Disclosure Statement:

- Grievance Procedure: The Residence must provide a Resident grievance procedure which *fully preserves* the right to contact the Assisted Living Ombudsman *at any time*. The address and telephone number of the Assisted Living Ombudsman Program must be included in this procedure:

  One Ashburton Place, 5th Floor
  Boston, MA 02108
  1-800-AGE-INFO (1-800-243-4636)
  1-617-727-7750
  TDD/tty: 1-800-872-0166

- Resident Rights: The Residence must provide a written statement of the Resident Rights in accordance with 651 CMR 12.08(1).

- Limitation of Services: The Residence must specifically explain any limitations on services (651 CMR 12.08(3)(f)), for example:

  - The Residence does not provide a two-person assist with any ADL.

  - The Residence does not provide SAMM with non-pharmacy packaging.

  - The Residence will provide up to but not more than three meals per day (with tray service twice per month).

  - The Residence will provide a maximum of two hours of assistance with personal care (including SAMM) per day.

- The Nurse's Role: The Residence must include a description of the role of the nurse in the Assisted Living Residence, and explain that any and all nurse(s) employed by the Assisted Living Residence must not provide Skilled Nursing Care therein (e.g., injections, sterile dressing changes) (651 CMR 12.08(2)(a)(10)).

- Staffing Levels: The Residence must describe the number of nursing and personal care employees scheduled per shift. For example:

  Currently, **ABC Assisted Living** schedules the following number of workers:

7am – 3pm	___ personal care worker(s)	___ nurse(s)
3pm – 11pm	___ personal care worker(s)	___ nurse(s) (until __ pm)
11pm – 7am	___ personal care worker(s)	___ nurse(s)

  Staffing levels explained as FTEs (Full Time Employees) or as ratios to number of Residents are not acceptable.

14. Can a person who will only be staying at the Residence for two weeks (on a respite stay) just sign an abbreviated Residency Agreement?

The Residency Agreement for a respite stay need not be identical to the agreement for a "long term" residency, but it must meet all of the same requirements stipulated for a "long term" residency.

1. If a Resident refuses to provide a physician's statement to the Assisted Living Residence, will we be cited for this at the next compliance review?

The Residence must make a good faith effort to encourage the Resident, or his or her Legal Representative, to obtain the completed assessment within the proper timeframe, and must document this in the Resident's record. However, as set forth in 651 CMR 12.04(7), it is ultimately the responsibility of the Resident or his or her Legal Representative, not the Residence, to have an assessment completed by a physician or another authorized practitioner.

2. How often must we reassess a Resident?

The Residence must review the initial service plan within 30 days of the date on which the Resident began to live at the Residence. Thereafter, the Residence must review the assessment upon identification of a "significant change" in the Resident's condition, but in any case, at least once every six months.

Note that a service plan must be updated at least once every six months and must be based on a current assessment. In order to keep the service plan and the assessment synchronized in this fashion, the Residence may find it helpful to review the assessment at the aforementioned 30 day point.

3. What is meant by the term "significant change" in 651 CMR 12.04(7)(d)?

Some examples of a "significant change" are as follows:

- A Resident's move to or from the part of the Residence designated as the SCR;
- A Resident's change in service needs which would lead to a change in the monthly fee;
- A significant change in any of the information listed in 651 CMR 12.04(7)(b)(1) through (8); and,
- Other changes pursuant to the Residence's written policy.

4. 651 CMR 12.04(7)(d) states that one of the purposes of reviewing the assessment is to determine if the Residence is capable of meeting a Resident's identified needs. How do we document a situation in which a Resident requires a service that our Residence cannot or will not meet?

Elder Affairs will assume that the Residence has agreed to meet a Resident's identified service needs unless the Resident Record includes documentation to the contrary (e.g., the service plan lists the name of the outside agency providing the services or includes documentation that the Resident has declined services offered by the Residence.)

5. If only minor changes need to be made to the assessment, are we still required to complete an entirely new form?

No, the Residence need not complete an entirely new assessment form each time a reassessment is conducted. Rather, changes to the assessment may be written on the original document as long as the following conditions are met:

- Each person who participates in the assessment process appropriately documents his or her participation;
- The Resident's current needs and preferences are accurately documented;
- All additions or deletions are clearly and legibly written;
- All changes are signed or initialed and dated by the Service Coordinator who conducted the assessment, so that Elder Affairs can determine when each change was made;
- All notations are made in pen; and,
- Liquid paper, correction tape or similar products are not used.

6. How should we document review of an assessment?

If no change in the assessment is necessary, document on the assessment that no change was made and sign and date the assessment. To document participation in the assessment process, the Resident or his or her Legal Representative must either: (i) sign and date the assessment, or (ii) sign an acknowledgment stating that the Resident has participated in the assessment and understands that he or she has a right to review the assessment.

7. How much detail does 651 CMR 12.04(7)(b)(8) require the Residence to include in the assessment form regarding medications?

This component of the assessment must be thorough and complete and cover both the physical and cognitive aspects of self-administration (e.g., a simple "yes"/"no" assessment will not meet the requirements). For example:

- If a Resident takes pills and uses an inhaler, the assessment must cover the Resident's ability to use an inhaler properly and his or her ability to take oral medications.
- The assessment must clearly indicate that the Residence considered the Resident's ability to request and take medications safely and appropriately.

8. As a Group Adult Foster Care (GAFC) provider, we are required to use the MDS-HC assessment tool for all GAFC clients. Is this tool sufficient for the purposes of 651 CMR 12.04(7)?

No, completion of the MDS-HC assessment tool, whether on paper or as modules of the Comprehensive Data Set (CDS) in the Senior Information Management System (SIMS), by itself does not meet all of the assessment requirements of 651 CMR 12.04(7). All Assisted Living Residences must adhere to the assessment criteria set out in 651 CMR 12.04(7).

1. 651 CMR 12.04(3)(b)(2)(iv) states that we must document in writing the observation of the Resident's actions regarding the medications. What exactly must we document?

Documentation of the Resident's actions regarding the medication must at a minimum include the following:

- The name of the Resident;
- The time period in which assistance with SAMM was provided or offered (e.g., 8AM, 10AM, Noon, and 8PM);
- Information indicating whether the medication was taken or not;
- The reason the medication was not taken (e.g., refused, Medical Leave of Absence, Leave of Absence, no medication available); and,
- The signature or initials of the employee who assisted and observed SAMM.

As described above, for regularly scheduled medications, personal care workers must document the Resident's actions regarding medication taken on an as needed (PRN) basis. If the number of pills is variable (e.g., one or two pills), then the number of pills assisted with should also be documented.

2. If a Resident does not need help with opening containers, can we just call or knock on a Resident's door to remind the Resident that it is time to take his or her medication?

No. Assistance comprised only of a "medication reminder" is prohibited. Therefore, a Residence is not in compliance with SAMM if it uses phone calls or in-person reminders to a Resident to take his or her medication, or if it leaves medication on a kitchen table or beside the bed.

3. Who determines when it is or is not appropriate to take medication?

Only the Resident may decide when it is or is not appropriate to take medication.

4. We are considering allowing non-pharmacy filled medication containers. If we decide to provide this service, what must we do regarding disclosure and consent?

If you choose to provide SAMM assistance from a non-pharmacy filled medication container, then at a minimum every applicable Resident must sign:

> (a) A written disclosure of the risks involved, including the risk that: (1) the Resident may not receive the correct medication or the correct dosage; (2) the medication may be omitted from the container; and (3) the container may be filled improperly causing the Resident to take the wrong medication or an incorrect dosage; and,

(b) A consent by the Resident and/or his or her Legal Representative. Note that it is the Resident, not the family member responsible for filling the containers, who must consent to these risks.

If the Residence chooses to allow the use of such containers for Residents who participate in SAMM, then, as with all services, the Residence must offer this option to all Residents for whom the service is appropriate. However, the Residence may refuse to offer this service to a Resident if it is its assessment that the person who would be filling the containers for the Resident is unable to do so properly or in a timely manner.

5. We have a preferred provider arrangement with a particular pharmacy. Can we require any Resident who does not use this preferred pharmacy to utilize a non-pharmacy filled medication container?

No. In accordance with 651 CMR 12.08(1)(g), the Residence may not restrict Residents' utilization of the pharmacy of their choice, subject to *reasonable* rules imposed by the Residence. Furthermore, any Residence that intends to set limits on medication packaging systems must submit a policy regarding medication packaging systems to Elder Affairs for approval prior to implementation of the policy. *Elder Affairs will not approve any policy that precludes a Resident from being able to make use of insurance coverage for medications or which requires a Resident to use a certain or limited number of pharmacies.* For example, if a Resident's insurance only covers mail-order medication, then the Residence must accept such packaging system.

6. Can we refuse to assist with any and all PRN medications through the SAMM program?

No. The Residence may not exclude certain prescription and over-the-counter medication, regardless of whether such medication is taken according to a set schedule or as necessary (PRN) from its SAMM service.

If a Resident is incapable of self-administering a PRN medication (or any other type of medication) through the SAMM program, then Limited Medication Administration (LMA) would be an appropriate service.

7. How do we know whether a Resident is appropriate for SAMM or requires LMA instead?

It is important that the Residence properly assess and reassess all Residents' ability to participate safely in the SAMM program, and in particular, their ability to safely request assistance with PRN medication. The assessment must be specific to each of a Resident's medication needs. For example, a Resident who uses eye drops, an inhaler, and oral medications must be assessed for his or her ability to take each medication via its applicable route.

8. Can a Resident take some medications "independently" and others through SAMM?

Yes. A Resident may choose to self-administer some but not all of his or her medications without the assistance available under SAMM. For example, a Resident may choose to keep his or her nitroglycerin pills on hand at all times rather than having to wait for assistance from a personal care worker. In such a case, the service plan should clearly indicate which medication(s) the Residence is not responsible for providing assistance to the Resident.

Please note, in a situation such as the one described above, it is critical that the medication assessment as required in response to FAQ 6 in this section, clearly demonstrates that the Resident is capable of taking the applicable medication(s) independently.

9. Can the pharmacy leave all of the medications in the nurse's office to be distributed later?

No. Central storage of Resident medications (i.e., the storage of medications in an area outside of the Resident's Unit) is prohibited in a Residence. Therefore, medications must be delivered from the pharmacy *directly* to the Resident or the Resident's Unit. If the Resident is unavailable at the time of delivery, with prior written permission, the pharmacy in conjunction with the Residence may deliver medications to the Resident's Unit for storage in the standard manner or location within the Unit.

10. For a specific Resident's safety, can we require medications that are taken via the SAMM program to be locked and therefore not accessible to the Resident alone?

Yes. Medication may be kept in a locked container in the Resident's Unit for the Resident's safety. Both the medication assessment and the service plan should indicate that there is a need for the medication to be locked.

Please note, medications which are taken independently may not be locked as the Resident must have access to them to be considered "independent."

Service Plan Requirements 651 CMR 12.04(8) June 4, 2007

1. Does a service plan need to be completely redone each time it is revised or updated?

No. The Residence need not complete a new service plan form each time the plan is updated. Changes to the service plan may be written on the original document as long as the following conditions are met:

- The Resident or his or her Legal Representative must sign and date the updated service plan to document participation;
- The Resident's current needs and preferences are accurately documented;
- All additions or deletions are clearly and legibly written;
- All changes are signed or initialed and dated by the Service Coordinator who conducted the assessment, so that Elder Affairs can determine when each change was made;
- All notations are made in pen; and,
- Liquid paper, correction tape or similar products are not used.

2. What should we do if, at the next review of the service plan, there is no change required?

If no change is necessary, document on the service plan that no change was made, and sign and date the service plan. Again, the Resident or his/her Legal Representative must sign and date the service plan indicating that he or she was involved in the service planning process. If the service plan form is reviewed and updated every six months but has not been signed by the Resident or his or her Legal Representative, the Residence will be considered to be out of compliance with the requirement of updating the service plan.

3. Assisted Living Residences sometimes have difficulty obtaining signatures from Legal Representatives; if so, what is the appropriate procedure?

Elder Affairs recognizes that it is not always possible to immediately obtain signatures from some Legal Representatives. The Residence should allow additional lead time when delays may be reasonably anticipated, make reasonable and timely efforts to obtain the signature(s), and document all attempts to have the service plan signed (e.g., in progress notes and copies of letters).

4. Who must sign the service plan if the Resident has a Legal Representative?

If a Resident has a Legal Representative, the Legal Representative must sign the service plan (and any other documents that require a signature). The Resident may still sign the service plan and should be involved in the planning process to the extent that he or she is able, but only the Legal Representative's signature will be recognized as meeting the signature requirement.

5. What is the permitted role for a Resident Representative in service planning?

As defined by 651 CMR 12.02, the Resident Representative cannot act on behalf of a Resident in circumstances requiring a Legal Representative. However, a Resident Representative may help a Resident fully participate in the service planning process or pay fees (e.g., consulting with the Resident, or acting as the Resident's liaison to gather or transmit information).

6. In addition to the service plan requirements, what are the requirements for other records that relate to the Resident's care, such as task sheets? Can these be used as a Service Plan?

Documents such as "task sheets," "ADL sheets," or "monthly service reviews" that do not meet all of the requirements of 651 CMR 12.04(8) do not constitute a service plan. However, because such records address a Resident's care, they are a part of a Resident's record and must be maintained in the Residence.

7. What are the obligations of a Residence if the Resident refuses to accept all of the services that are recommended?

First of all, the Residence should take reasonable steps to encourage the Resident to accept the service. For example, select the time(s) and forum(s) when the Resident would be most receptive, consider involving a family member, and inform the Resident of the benefits of the service. Clearly document these attempts.

If the Residence assesses a Resident to require a particular service and, despite the Residence's reasonable attempts, the Resident refuses to accept the service (or the level of assistance assessed by the Residence), then the Resident's record should clearly indicate that the Resident's service preferences differ from the assessed needs. For example, a progress note is one acceptable means to document this difference.

8. What is meant by the requirement in 651 CMR 12.04(8)(a)(2) that the service plan should include an indication of the Resident's goals?

The Resident's goals may be as simple or complex as he or she chooses. For example, the Service Coordinator may determine from the Resident that the Resident's only goal is no longer to have to cook or clean, or that the Resident has a series of very specific goals, several for each type of assistance provided.

9. What components should the service plan include, and how detailed or specific should they be?

- The service plan must include specific and individualized information regarding the type and level of assistance that a Resident needs. The statement does not need to be complicated or lengthy but must fully describe the activities or actions of the personal care workers. For example, for assistance with dressing, simply writing, "assist with dressing" is not sufficient.

However, “assist with buttons and zippers, only” would be acceptable.

- In connection with how any behavioral issues will be addressed, the service plan should include a statement which describes the assistance or intervention that the staff would provide. For example, if a Resident becomes aggressive whenever she sits next to a particular Resident, the service plan should indicate what assistance or intervention the staff would provide to address the issue of her aggression toward that Resident, or to prevent the situation from arising.

- The service plan must include the specific type(s) of assistance with medication that the Resident requires — independent, SAMM, LMA or a combination of the above. Examples of ways to document assistance with medication are:

    - Independent with OTCs, SAMM for all other medications;
    - Independent with nitroglycerin, SAMM for everything else;
    - SAMM for oral medications, LMA for eye drops; and
    - LMA for controlled substances only.

- The service plan must clearly state whether staff are awake at night or not.

- If an individual has a personal emergency response system, it should be noted on the service plan. Any other method for contacting staff in an emergency should also be noted. For individuals who are cognitively impaired and/or lack the ability to use a call system appropriately, the service plan must indicate how the Residence will ensure that such Residents can access services 24 hours per day.

- The service plan must describe whether keys or access codes are readily available to specified staff (see the response to FAQ 1 in the Physical Requirements section.)

- If the Residence chooses to hold money for a Resident (see 651 CMR 12.04(6)(c)), it should be noted on the service plan.

- The dietary component of the service plan should include not only the type of diet the Resident is on, but also, other applicable dietary needs (e.g., “cut meat” or “tell Resident where different foods are located on the plate”).

10. What is meant by the term “staff capability” in the context of the requirement that the service plan include “details of the manner in which the Residence shall provide for the presence of a 24 hour per day, onsite staff capability?”

The service plan must state that staff are available to assist with scheduled and unscheduled Resident needs 24 hours per day. The service plan must also state *whether or not* any staff members are awake overnight since such status affects staff “capability.” This may be a simple statement regarding staff capability (e.g., “all staff are awake throughout the night to assist with

personal care" or "the personal care assistant is not required to stay awake all night but can be contacted by calling 508-123-4567".) However, note that for a Special Care Residence, staff *must* be awake (see 651 CMR 12.06 (4)).

11. What documentation is required of services provided by an outside agency?

The Residence may not require Residents to notify the Residence that they are receiving any outside services, as such a requirement would violate their right to privacy (651 CMR 12.08(l)(b)). However, to the extent that the Residence is aware that services are being provided by an outside organization, the service plan must include any information provided to the Residence regarding those services, and should include the name of the program or agency and the frequency, duration, and type of service. Progress notes regarding services provided by an outside agency are not, by themselves, sufficient.

Examples of ways to document outside services on the service plan are:

- BDI Home Health for PT gait training—2x/wk for 4 weeks starting 12/3;
- Family responsible for obtaining medications and filling medi-planners;
- XYZ VNA for B-12 IM 1x month.

12. What steps should a Residence take to ensure that the service plan is treated confidentially?

To respect Residents' rights to confidentiality, service plans must be kept in a secured area. For example, service plans may not be left on a desk or on a shelf in a public area of the building (even with any designation of the space as "for personal care workers only"). Also, Responsible Party contact information should be treated confidentially and may not be posted in the hallway.

13. How long does a Residence have to maintain records of service plans on site?

It is critical that all records (including progress notes, medication observation sheets, tasks sheets, or other documentation of which ADL and IADL tasks were completed on a daily basis for each Resident) going back two years or since the last Elder Affairs compliance review, whichever is longer, be easily accessible at all times. Accordingly, this documentation must be kept at the Residence or in a building which is located on the same campus as the Residence, and more than one staff person must have access to the documentation to ensure that all such records are accessible to Elder Affairs at any time. Further, records older than two years must be made available to Elder Affairs within a reasonable time, including the Resident Record which must be maintained for at least six years after the termination of the Residency Agreement in accordance with 651 CMR 12.05(1). Note that this requirement does not replace any other applicable requirements under record retention laws. Therefore, a Residence must not remove or destroy any records without ensuring compliance with the Regulations and these laws.

1. Our Assisted Living Residence includes a designated Special Care Residence (SCR). Will the regular operating plan, in place for the Residence, continue to suffice?

Probably not. The operating plan required for an SCR includes all of the items listed in 651 CMR 12.03(2)(f) *but must be particularized to the SCR population*. See 651 CMR 12.04(5). If you have a Residence with a designated Special Care Residence, some sections of the operating plan may continue to be sufficient, but you must be clear which components of the SCR operations are equivalent to those of the overall Residence, and which are different or expansions. For those that are different or expanded ALR functions, explain the operational differences.

2. What information must be included in the SCR operating plan?

In addition to what is specifically listed in 651 CMR 12.03(2)(f) and 12.04(5), the following information and documents must be included in the SCR operating plan:

- A 24-hour preparedness plan which is based upon the assessed needs of the Residents for assistance in a Residence-wide emergency situation, such as the need to evacuate the building;
- A policy to ensure Resident safety during power outages or other situations when the locking or unlocking mechanisms of the doors may not be functioning; and
- Policies and procedures to assess and reduce the risk of potential hazards in the physical environment related to the special characteristics of the population served. At a minimum, these policies must address the following:

    - Limiting odors and ensuring a sanitary environment;
    - Responding to Resident emergency situations (e.g., when to call 911, what to do if a Resident falls); and,
    - Storing potentially hazardous materials (e.g., cleaning materials, oxygen).

3. What information must be included in our policies that address unsafe behaviors, such as wandering, and verbally or physically aggressive behavior (including coercive or inappropriate sexual behavior)?

All policies developed as part of the operating plan for compliance with 651 CMR 12.04(5)(a)(5) should include the following information:

- How to determine when such a behavior is present;
- How to manage the behavior appropriately;
- How to report and document the behavior, including when an outside agency must be notified (e.g., Protective Services);

- Guidelines for when the behavior may be beyond the scope of assistance offered by the SCR and which may therefore lead to termination of the Residency Agreement; and,
- The title of the employee(s) responsible for implementation of the various aspects of each policy.

4. Do we need to offer one activity each day to address: 1. Gross motor activities; 2. Self-care activities; 3. Social activities; and 4. Sensory and memory enhancement activities, for a total of four activities each day, or is one activity which falls under at least one category sufficient?

Daily activities need not fall under all four of the categories set forth in 651 CMR 12.04(5)(b). The types of activities offered should be based on the specific needs of the general population served by the SCR. For example, an SCR for Residents with Huntington's disease may focus on physical activities to increase or maintain strength and balance, while an SCR for Residents with dementia may provide activities based on the principles of Habilitation Therapy.

5. The Activities staff do not work on Sundays. Do we still need to provide an activity in the SCR? Would provision of a meal suffice as an activity?

The Residence must provide at least one activity every day including Saturdays, Sundays, and all holidays. Provision of a meal by itself does not count towards this requirement.

6. We mail family members a monthly activity calendar on 8 ½ by 11 inch paper. Would this same publication suffice for Residents?

Most likely, no. A schedule of activities must be provided to Residents on a regular basis in an accessible format, based on individual Resident needs, which offers each Resident as much independence as reasonably possible. A monthly calendar may be acceptable but one 8 ½ by 11 inch sheet of paper for a whole month of activities will probably not be easily readable for most elders. Furthermore, remember that colored paper and ink can also be difficult for people with vision impairments to read.

1. Are there additional orientation and annual in-service training requirements for work in a Special Care Residence?

Yes. See the tables within this section of the FAQs, which illustrate the additional requirements for an SCR.

2. All staff and contracted providers in an Assisted Living Residence who will have direct contact with Residents and all food service personnel must complete a seven hour orientation. What does "direct contact" mean in this situation?

For purposes of the orientation requirements, an employee will be considered to have "direct contact" with a Resident if his or her position requires periodic or regular face-to-face contact with a Resident. Therefore, with rare exception, the orientation requirements will apply to all housekeeping, maintenance, activity, and administrative staff, as well as personal care and food service personnel. The narrow exception would be, for example, a person that works only in the Residence's laundry room every day and who would not ordinarily encounter any Resident.

3. Do the training requirements differ depending on whether the person is an employee or is contracted? Do they differ for full-time, compared to part-time, or per diem, or seasonal employees?

No, the requirements do not differ. The requirements apply to all employees whether employed full time, part time, per diem or on a seasonal basis. Furthermore, the requirements apply to personnel regardless of whether they are employed directly by the Residence or are employed by an organization through which the Residence contracts for their services.

4. Currently we require Personal Care Workers (PCWs) to observe a senior PCW doing SAMM before they complete the required one hour long SAMM orientation. Is this in compliance with the requirement that the orientation be completed prior to active employment?

Yes. "Active employment" begins at the point where an employee performs his or her customary job function(s), whether supervised or unsupervised. For example, a Personal Care Worker must complete the orientation in its entirety before assisting any Resident, whether or not the PCW is supervised while completing his or her duties. In this example, the new employee is only observing another employee perform his or her customary job function(s) and has not yet personally completed an assigned task. Therefore, this new employee is not yet actively employed.

5. If a PCW does not get assigned to provide SAMM until he or she has been employed for at least six months, can we hold off on completing the one hour long SAMM section of the orientation until that time?

No. The complete orientation, including the additional one hour training on SAMM, must be completed prior to active employment. In this case, active employment means the performance of any job function or functions.

Please note that in order for Elder Affairs to be able to determine if this requirement has been met, it is critical that each employee's file clearly state the date of *active employment* if different from the date of hire. Without both of these dates, Elder Affairs will assume that the date of hire is the same as the date of active employment.

6. Must an employee, newly hired at a Residence, complete an orientation even if he or she completed one at another Residence only 3 months ago?

Yes. The employee must complete the required orientation at his or her new place of employment. The initial orientation is not transferable from one Residence to another, even if both Residences are owned and/or managed by the same entity. The purpose of the orientation requirement is to be sure that the employee is familiar with important roles and policies of the Residence.

7. If a housekeeper who has not yet worked in the part of the Residence that is designated as the Special Care Residence is now going to start to work in the SCR, must he or she repeat the entire orientation?

No. The housekeeper would not have to retake the entire orientation, but prior to active employment in the SCR, he or she would need to complete the additional seven hours of specialized orientation associated with an SCR. (See the chart, Orientation for SCR Employees, in response to FAQ 11 in this section.)

8. If a housekeeper worked in the SCR before September 8, 2006 (the effective date of the amended Regulations), does he or she have to complete the additional seven hours of SCR orientation?

No. Any employee who worked within the SCR prior to September 8, 2006 is "grandfathered" and does not have to complete any additional orientation.

Any employee hired to work within the SCR after September 8, 2006 must complete the additional seven hours of specialized orientation prior to active employment in the SCR.

9. There is a new requirement that part of the orientation be "facilitated." What does this mean?

- The training should be conducted by a person who can lead a discussion of the topics and answer trainees' questions.
- Training will be considered "facilitated" if, for example, a supervisor personally introduced the trainees to the topic about to be covered via videotape, discussed the tape after it had been viewed, and reviewed the trainees' answers to a quiz.
- Training will be considered "unfacilitated" if the trainee's contact with the trainer is limited to, for example, setting up the presentation equipment and later picking up completed quizzes.
- Documentation of completed orientations must indicate which sections, if any, were unfacilitated.
- No more than two of the seven hours required for orientation may be unfacilitated.

10. How many hours of the annual in-services must be facilitated?

None. The requirements regarding unfacilitated trainings do not apply to annual in-service requirements, only to the initial orientation.

11. How many hours of orientation does a Personal Care Worker need? Does a housekeeper have to meet the same requirements? What about an employee hired to work only in a Special Care Residence?

The following tables summarize the orientation requirements according to employee categories and assisted living setting:

Table I: Orientation for Employees Working in Assisted Living Residences (Employees Working in SCRs, see Table II below)

	Hours		**Hours**
Personal Care Workers		**Other Employees***	
Orientation – General Topics	5	Orientation – General Topics	5
Dementia Topics	2	Dementia Topics	2
SAMM	1	**Total Hours**	**7**
	Total Hours	**8**	

Table II: Orientation for Employees Working in SCRs

	Hours		**Hours**
SCR Personal Care Workers		**Other SCR Employees***	
Orientation – General Topics	5	Orientation – General Topics	5
Dementia Topics	2	Dementia Topics	2
Special Care-Specific Topics	7	Special Care-Specific Topics	7
SAMM	1	**Total Hours**	**14**
	Total Hours	**15**	

* The Manager and Service Coordinator are each required to complete an additional 2 hours on dementia care topics as a part of their orientations.

13. Are there any in-service training topics that cannot be counted towards fulfillment of 651 CMR 12.07(3)?

All in-service trainings must fit one of the categories listed in 651 CMR 12.07(1) or (3) and must assist an employee in understanding: (i) his or her job and the way in which his or her work intersects with and supports the work of other employees, (ii) the policies and procedures of the Residence, (iii) the rights of the Residents, and (iv) the particular and distinctive service needs and health concerns of the Residents. Therefore, for example, a 60 minute staff meeting on employee benefits cannot count as an in-service training. Conversely, an in-service training on "high dusting" and floor cleaning for the housekeeping staff relates directly to those employees' jobs and would count. Furthermore, a session for the housekeepers about how the Residence's activities program benefits the Residents could also count. Note that in the overall planning of its in-service curriculum, the Residence should ensure that the topics most directly related to any employee's duties (e.g., dusting and cleaning in-service for housekeepers) are not displaced by topics that are helpful but not as directly related (e.g., activities program in-service training for housekeepers).

14. We know all training must fit one of the categories listed in 651 CMR 12.07(1) or (3), but are there any topics that must be covered every year?

Yes, all employees must receive training on the Residence's disaster and emergency preparedness plan at least annually. Furthermore, Personal Care Workers *must* receive training at least annually on the Residence's policies regarding: 1) emergency response to acute health issues; 2) first aid; and 3) Self-Administered Medication Management (SAMM). The SAMM portion of this training must be at least one hour long; there are not time requirements for the other topics.

15. Can an employee carry over in-service training which was completed while he or she worked at another Residence?

Training completed within the past 18 months at another Assisted Living Residence may be used to satisfy annual in-service training requirements. If in-service training requirements from such previous employment are counted for a current employee's requirements, there must be reliable documentation from the employee or previous employer in the employee's personnel file. Acceptable documentation would be either a letter from the previous employer, a certificate of attendance, or a sign-in sheet. As always, the documentation must include the date, length and topic(s) covered during the training.

16. How many hours of in-service training does a Personal Care Worker need each year? Does a housekeeper have to meet the same requirements? What about an employee working in a Special Care Residence?

The following tables summarize the annual in-service training requirements:

Table III: Annual In-service Training for Employees Working in Assisted Living Residences (Employees Working in SCRs, see Table IV below)

	Hours		**Hours**
Personal Care Workers Only		**All Other Employees**	
Training – General Topics Must cover the Residence's policies on: • emergency response to acute health issues; • first aid; and • the disaster and emergency preparedness plan	8	Training – General Topics Must cover: • the disaster and emergency preparedness plan	8
SAMM	1	Dementia Topics	2
Dementia Topics	2	**Total Hours**	**10**
	Total Hours	**11**	

Table IV: Annual In-service Training for Employees Working in SCRs

	Hours		**Hours**
Personal Care Workers Only		**All Other Employees**	
Training – General Topics Must cover Residence's policies on: • emergency response to acute health issues; • first aid; and • the disaster and emergency preparedness plan	8	Training – General Topics Must cover: • the disaster and emergency preparedness plan	8
SAMM	1	Dementia Topics	2
Dementia Topics	2	Special Care-Specific Topics	4
Special Care-Specific Topics	4	**Total Hours**	**14**
	Total Hours	**15**	

18. Does an employee hired, for example, by a Residence in September have to have completed all 10 or 11 hours (or 14 or 15 hours for a Special Care Residence) of annual in-service training by the end of the calendar year?

No. If an employee has not worked at a Residence for at least a twelve month period, he or she is not required to have completed any in-service training, but must complete the requirements by the first anniversary of his or her employment.

19. If an employee starts work in our Assisted Living Residence on January 1 and goes out on maternity leave for September and October of that same year, would she still have to have completed all 10 or 11 hours (or 14 or 15 hours for a Special Care Residence) of annual in-service training by the end of the calendar year?

No. Substantial time spent out on medical, family or similar leave may be deducted from the original date of employment for determination of having met the ongoing in-service training requirements. However, to do so, the Residence must:

- Have in place a clear policy for determining how employees' mandated training schedules are revised;
- Clearly indicate hiring date and dates of leave(s) for any employee affected by this policy; and,
- Document clearly how the relevant employee's mandated training schedule has been revised in accordance with the policy.

20. What type of documentation do we need to keep to receive "credit" for all the trainings we do?

In order for Elder Affairs to credit any training towards the required hours, training documentation must include the following information:

- The name of the employee;
- The date(s) on which the training took place;
- A list of topics covered during the training;
- The length of time spent on each topic;
- The name and signature of the facilitator(s); and,
- The employee's signature, dated.

A sign-in sheet or a completed quiz is acceptable documentation if it includes all of the information required above and is kept within each employee's record or in a binder specifically for documentation of completed trainings. A spreadsheet or similar tracking sheet is *not* sufficient. Sign-in sheets or similar documentation are required in order for Elder Affairs to confirm the information on the Residence's tracking sheet.

21. We have monthly staff meetings. Can we count these meetings as in-service trainings?

Staff meetings may be used towards meeting the annual in-service training requirements if the documentation standards above are met and the topic(s) covered during the staff meetings fit one or more of the categories listed in 651 CMR 12.07(1) or (3).

22. If an employee attends a seminar conducted by an outside agency and receives a certificate of attendance for 2.4 CEUs, does this automatically counts as 2.4 hours of in-service training?

Not necessarily. Continuing Education Units (CEUs) are not always equivalent to the number of *hours* at the training session. Our training requirements are expressed as hours. Therefore, any certification with CEUs must specifically document the time spent at the training in order to credit it accurately towards these requirements.